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THE ANDERSON FUGITIVE CASE

The recent decision of the Canadian government not to allow deportation to proceed in the case of Matthew Bullock, a Negro whose return was asked by the State of North Carolina, has served to recall to public attention in Canada certain cases occurring during the period of slavery in the United States when the Canadian courts were asked to order the return of fugitives. The most famous of these was the Anderson case tried before the Canadian courts at Toronto, in 1860, interest in which stirred the British provinces from end to end.

The Bullock case, recently decided, has some points of similarity to the Anderson case, though the circumstances vary greatly. Bullock was charged with participation in race riots in North Carolina in January 1921. He had made his way to Canada and succeeded in evading the immigration authorities in entering the country. It was admitted by the Canadian authorities that he was in the country illegally but in the final decision it was stated that, as he had conducted himself in an exemplary manner since entering, he would be allowed to remain. On behalf of the fugitive it was freely hinted that should he be returned to North Carolina he would risk being a victim of mob justice. While this plea doubtless influenced the Canadian immigra-

tion authorities, it could not, of course, be stated as their reason for allowing the man his freedom.

The Anderson case of 1860, to which so much newspaper reference was made during the progress of the Bullock case, came just on the eve of the American Civil War. In some respects it looked to be one of the last efforts of the slave-owners to secure complete enforcement of the Fugitive Slave Law of 1850. That measure, so detested by the North, became a dead letter in many sections by the force of public opinion but was also weakened by the fact that the fugitive in the North could soon cross into Canada, if threatened by any sudden enforcement of the law. An arrest under the Fugitive Slave Law in any northern city was usually followed by a swift trek into Canada of other Negroes who feared that they might be the next victims. But what if there could be found some means of using British law to secure the return of fugitives from Canada? This appears to have been in the minds of those who tried to get Anderson out of Canada in 1860. It is difficult to account, otherwise, for the strenuous efforts that were made to secure his extradition. That the Missouri slaveholders felt they were performing something in the nature of a public service by fighting this case in the Canadian courts, is evidenced by their request that the State should reimburse them for their outlay.¹

John Anderson appears to have arrived in Canada in November 1853, crossing over the Detroit River to Windsor where he stayed with Mrs. Bibb, mother of Henry Bibb, who was attempting to organize a refugee settlement not far from that frontier point. Mrs. Laura S. Haviland, a philanthropic Michigan woman who was doing missionary and educational work among the fugitives, met him soon after his arrival and learned his story. She says that he came to her asking that she write a letter for him. This letter revealed the tragedy in which he had recently figured

¹ On March 27, 1861, certain Howard County citizens petitioned for money advanced by them to prosecute Anderson in the Canadian Courts (*Session Laws*, 1860, p. 534).

and that had caused him to flee to Canada. She had noted the sadness in his face which indicated the stress through which he had passed. He told her that to satisfy a debt he had been sold by his master, Seneca Diggs, and was to be separated from his wife and four children. Husband and wife pleaded not to be separated but the reply was that the buyer desired only the man. Later, however, the master indicated that some other arrangement might be arrived at but the man was suspicious and armed himself with a dirk. His suspicions were further aroused when he was told to come to the woods where some trees were to be chopped and when he noticed that the master had a stout rope under his coat. The slave kept at a distance from the master until the latter finally frankly admitted his purpose. The slave declared that he would never be taken but at this point another man appeared and Anderson began to run. The slavers followed him for seven miles and finally had him cornered. Anderson flourished his knife and threatened to kill the first man who laid hands upon him. All stood back but Diggs who, with a knife in his hand, rushed at the slave. In the melee the master was stabbed and the slave escaped into the woods. That night he saw his wife and family for the last time. The woman informed him that he had killed his master and that if he were caught he could expect to be burned alive or chopped to pieces. She urged him to flee to Canada, and if he arrived there safely, he was to write to her father who was free. This is the story as he told it to Mrs. Haviland and it was the letter to his father-in-law that he wished her to write.

Mrs. Haviland shrewdly suspected that a letter from Canada addressed to a Negro related to Anderson would not likely reach its destination and would also give a clue to the fugitive's whereabouts. Accordingly she dated the letter from Adrian, Michigan, and asked that the reply be sent there. The answer, which came shortly after, said that Anderson's wife and four children were being brought to

him. Mrs. Haviland replied to this letter but warned Anderson not to cross the Detroit River as she suspected a plot. In her message she asked the party to come to Adrian, Michigan, and inquire for Mrs. Laura Haviland, a widow, from whom information could be had regarding Anderson. A few days later a white man called, very clearly a southerner, and informed her that Anderson's family was in Detroit staying in the home of a Negro minister named Williams. The visitor seemed exceedingly anxious to find out where Anderson was and Mrs. Haviland finally told him that the man was in Chatham and advised that his family should be sent there. At this the visitor's face reddened rather noticeably. Mrs. Haviland lost no time in sending a message to Anderson advising him to leave Chatham. He got out none too soon for within a few days white men were in Chatham inquiring for him. They were told that he had gone to Sault Ste. Marie and they followed the trail there but without success. Finally they disappeared after leaving with Detroit people power of attorney to arrest Anderson, if he could ever be decoyed over the river or should be found there.

Mrs. Haviland, in her memoirs, says that after this effort to capture Anderson as a murderer she wrote a letter to Lord Elgin, the Governor of the Canadas, setting forth the facts, and that she received this reply from him: "In case of a demand for William Anderson, he should require the case to be tried in their British courts; and if twelve freeholders should testify that he had been a man of integrity since his arrival in their dominion it should clear him."²

There is a rather curious similarity between the latter part of this statement and the recent decision from Ottawa in the Bullock case, namely, that as the latter had conducted himself well since entering the country he should not be deported.

² For Mrs. Haviland's story see her book, "*A Woman's Life Work*," published at Grand Rapids, Mich., in 1881. Anderson's story as told to her is found on pages 197-8.

About three years after the events mentioned above, which would be about 1856, Mrs. Haviland records a meeting with D. L. Ward, a New Orleans attorney, who said to her: "We are going to have Anderson by hook or by crook; we will have him by fair means or foul; the South is determined to have that man."

The whereabouts of Anderson between 1853 and 1859 is not on record. Probably he lived most of that time in southwestern Ontario where his own people were most numerous. It is stated that he had worked in Hamilton and Caledonia. In the fall of 1860 he was working near Brantford when it came to the ears of a magistrate at Brantford, Matthews by name, that at some time in the past this Negro had committed a crime and was a fugitive from the justice of his own State. Matthews had the Negro arrested and locked him up. It would appear that he had no evidence of any kind other than rumor. S. B. Freeman, who defended Anderson later, says that he went to the Brantford magistrate and made inquiries about the prisoner, being told that the fugitive was held pending the receipt of necessary evidence. According to Freeman's charges, which were made publicly in *The Toronto Globe* of December 11, 1860, Matthews communicated with private detectives in Detroit who passed the word on to friends of the deceased Diggs in Missouri and they promptly applied at Washington for extradition papers. *The Hamilton Times* charged that Matthews had subjected his prisoner to most rigorous prison life for two months, keeping him ironed, permitting no Negro friends to see him, not even admitting Rev. Walter Hawkins, the Negro preacher who afterwards became a bishop.³ It required very much persuasion on the part of Freeman, and apparently some threats as well, to induce the Brantford magistrate to release his prisoner. When let out of jail Anderson went to Simcoe and was working there when again arrested, this time, it would appear, on a warrant sworn out by a Detroit

³ See *The Toronto Globe*, Nov. 14, 1860.

man named Gunning. There are indications in the press reports of the time that the Brantford magistrate was much aggrieved at his prisoner getting into other hands and sought to have the case transferred to Brantford, being aided in this by the county Crown attorney.

In a letter to the *Hamilton Spectator* Freeman made this charge against the magistrate: "Mr. Matthews arrested him as having been guilty of murder without any legal evidence of a murder having been committed, or, in fact, of any one having been killed by him. And after he had him in custody he communicated with the authorities for the necessary evidence." ⁴

On November 24 Anderson was brought before the Court of Queen's Bench consisting of Chief Justice Robinson and Justices Burns and McLean. S. B. Freeman appeared for the prisoner and Henry Eccles and R. A. Harrison for the attorney-general. Freeman read the warrant of committal by William Matthews and the two other Brantford magistrates who had been associated with him. The evidence was to the effect that on September 28, 1859 (sic), Anderson was on the estate of Seneca T. P. Diggs in Howard County, Missouri, and that Diggs, while attempting with Negro help to arrest Anderson, was stabbed twice and later died. The question was whether Canada was to administer the slave laws of Missouri. The counsel for the Crown admitted that Anderson's act, if committed in Canada, would not be murder.

The Anderson case was practically the last important case to come before Chief Justice Sir John Beverly Robinson, and around perhaps no decision of his whole legal career did more excitement center. While the justices were considering the evidence public meetings were being held, not only in Toronto but in other Canadian cities. Newspapers were furiously defending the fugitive and the judgment of the court was being awaited with tense interest.

It was understood on November 30 that the Chief Jus-

⁴ Quoted in *The Toronto Globe*, Nov. 29, 1860.

tice was ready to give decision but that he deferred for his associates. On that date there were special police on duty about the court in fear of an attempt at rescue by the Negroes and others. *The Globe* of that date contended that the question of surrendering the man, being a matter of a treaty, should have been dealt with by the executive and not by the courts at all.

"The universal heart and conscience of the people of Canada and of the British nation will say upon the facts of the case that Anderson is not a murderer in the sight of God, or under British law," was a part of its comment editorially upon the case. A day or two later the paper pointed out the significance of this particular case. If Anderson were given up, it maintained, "no fugitive slave in Canada is safe on our soil . . . there is not a fugitive in Canada whose extradition may not be demanded upon evidence sufficient to put the accused upon his trial."⁵

The court finally gave its judgment on Saturday, December 15. The papers of the following Monday say, that as the decision was being given, police stood about the court with muskets and that a company of Royal Canadian Rifles were also under arms at the Government House.

In its decision the court was not unanimous. The Chief Justice and Justice Burns favored extradition while Justice McLean dissented. The biographer of the Chief Justice says of this judgment: "Their decision was neither in support of nor against slavery but was based entirely upon the consideration of the treaty existing between the United States and Canada." The biographer quotes also as follows from an English contemporary: "These judges, proof against unpopularity and unswayed by their own bitter hatred of slavery, as well as unsoftened by their own feelings for a fellow man, in agonizing peril, upheld the law made to their hands and which they are sworn faithfully to administer. *Fiat justitia*. Give them their due. Such men are the ballast of nations."⁶

⁵ *The Toronto Globe*, Dec. 3, 1860.

⁶ *Life of Sir John Beverly Robinson*, London, 1904, pp. 326-7.

Gerrit Smith, the famous abolitionist, was one of those who acted on behalf of the fugitive, and his plea made a strong impression. He argued that Anderson was not guilty of murder but at the worst of homicide, that the Ashburton case did not require the surrender of fugitives and that in any case Anderson's delivery was a matter for the English courts to decide.

On the evening of December 19, 1860, a huge mass meeting was held in St. Lawrence Hall. The mayor of the city presided and the chief speaker of the evening was John Scoble, the abolitionist.⁷ He was able to throw considerable light upon the exact meaning of the extradition treaty, having interviewed both Lord Aberdeen and Lord Brougham on its terms in relation to fugitive slaves at the time that it was passing through the British Parliament. He was at that time the secretary of the Anti-Slavery Society of England which had become alarmed over the possibilities to fugitives in Canada of the extradition clauses.⁸

Ashburton told him, he said, "that the article in question was no more designed to touch the fugitive slave than to affect the case of deserters or parties charged with high treason." Lord Aberdeen stated that instructions would be sent to the Governor of Canada that in the case of fugitive slaves great care was to be taken to see that the treaty did not work their ruin. Sir Charles Metcalfe, Governor of Canada, was quoted by the speaker as having said that he would never be a party to wronging fugitives.

⁷ The proceedings of this meeting are reported at length in *The Globe* of the following day.

⁸ Article X of the Ashburton Treaty, dealing with extradition, reads as follows: "It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisition by them, or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, shall seek an asylum, or shall be found within the territories of the other; provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed, etc."

In the course of his address Mr. Scoble gave some information about the arrest of Anderson. He said that he personally went to Brantford as soon as Anderson was taken up in April and tried to get a writ of habeas corpus but could get no help from counsel in Brantford. At the Brantford spring assizes Anderson was released by the judge, since there was no evidence against him, but was rearrested three days later. Other speakers at the St. Lawrence Hall gathering were Rev. Wm. King, M. C. Cameron, Rev. Dr. Willis, Rev. Dr. Burns, Peter Brown and Rev. Mr. Marling. At the close of the meeting there were cheers for Anderson and others and groans for Magistrate Matthews.

There was much comment in the Canadian press on the case as a whole and upon the judgment in particular. *The Montreal Herald* of December 19, 1860, said: "We hope that the day will never come when the wretches who traffic in the bodies and souls of their fellow creatures will be able to say to any British subject, 'And thou also art made like unto us.' " *The Quebec Mercury* said: "The judgment of the court in Anderson's case is one of those infamous prostitutions of judicial power to political expediency which in this degenerate age have too frequently polluted the judicial ermine." *The Montreal Witness* said: "Such a gigantic wrong cannot exist on the same continent with us without affecting the people of Canada in one way or another. Slaveholders long looked at Canada with evil eye. If the slavers get Anderson back they will execute him before the slaves. It would be worth hundreds of thousands of dollars to them annually."

Speaking on the evening of December 20 before the St. Patrick's Literary Society of Montreal, Hon. Thomas D'Arcy McGee condemned the decision in the Anderson case. "As a fugitive slave has never been yielded by this province," he said, "I cannot believe that we are going to take upon ourselves the yoke of that servitude just now. We have no bonds to break or keep with the 'peculiar insti-

tution' of the south; and the true voice and spirit of this province is that when the flying slave has once put the roar of Niagara between him and the bay of the bloodhounds of his master—from that hour, no man shall ever dream of recovering him as his chattel property.”

As soon as the decision of the Court of Queen's Bench was given, abolitionists in Toronto decided to carry the case to English courts and did so, securing from the Court of Queen's Bench at Westminster an order to bring Anderson there. In the meantime the case was carried to the Court of Common Pleas in Toronto and there on February 16, 1861, Chief Justice Draper acquitted Anderson, for the following reasons, as quoted in *The Toronto Leader*: “In the first place, the magistrate's warrant was defective inasmuch as the words used in the warrant did not imply the charge of murder, though perhaps expressing more than manslaughter; secondly, the warrant of commitment was also defective in not adhering to the words of the treaty.”

It would take long to list all the meetings, petitions, resolutions, and protests that were brought forth by the Anderson case. The Anti-Slavery Society of Canada, with headquarters in Toronto, was, of course, active throughout the whole case. Early in January it was reported that a petition signed by more than 2500 people had been forwarded from Montreal on behalf of Anderson and from elsewhere in Canada came similar protests.

With the decision of Chief Justice Draper the Anderson case was closed and the fugitive disappears. As a result, however, of the unseemly action of the Brantford magistrate the Canadian law was revised so as to take from the control of ordinary magistrates jurisdiction as regards foreign fugitives from justice, leaving such cases with county judges and police justices.

FRED LANDON.